

CITY OF FAYETTEVILLE REQUEST FOR PROPOSALS



VENUE MANAGEMENT FESTIVAL PARK COF1516856

ISSUED: DECEMBER 19, 2023

DUE: FEBRUARY 1, 2024

The City of Fayetteville is soliciting proposals for qualified Venue Managers to provide professional management of the performance venue for all aspects of operations including concert promotion and scheduling, food and beverage service, ticketing, show production including marketing sales and sponsorships, and day-to-day maintenance/janitorial services.

ISSUED BY:
CITY OF FAYETTEVILLE

PRIMARY CONTACT:
KIMBERLY TOON,
PROCUREMENT MANAGER
kimberlytoon@fayettevillenc.gov

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM


The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

CITY OF FAYETTEVILLE



Douglas J. Hewett, ICMA-CM
City Manager

NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., February 1, 2024** at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

Venue Management Festival Park

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301

The bid opening will be held at **2:00 p.m. on February 1, 2024** at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“Venue Management Festival Park.”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2nd floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to kimberlytoon@fayettevillenc.gov

The right is reserved to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

City of Fayetteville

Kimberly Toon, CLGPO
Purchasing Manager

This Request for Proposal (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for Venue Management Services.

It is the City of Fayetteville's intention to acquire the services of a qualified Venue Managers to provide professional management of the performance venue for all aspects of operations including concert promotion and scheduling, food and beverage service, ticketing, show production including marketing sales and sponsorships, and day-to-day maintenance/janitorial services.

Potential respondents should email kimberlytoon@fayettevillenc.gov to acknowledge receipt of the RFP to inform the City of its intent to respond. Provide the name, title, address, telephone and email address of the contact person. Addenda will posted to the website at www.fayettevillenc.gov.

The RFP includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the Contractor. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

In order for your RFP to be considered responsive, it must adhere to the submittal requirements that follow. The successful Contractor will be selected based on the Proposal and best value of services provided. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Fayetteville's SDBE Policy, the Contractor shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the SDBE policy is available in the Purchasing Office.

Questions concerning the proposed contract terms and conditions should be addressed to the Purchasing Office.

Sincerely,

Kimberly Toon
Purchasing Manager

REQUEST FOR PROPOSAL

Introduction

The City of Fayetteville is seeking a qualified and experienced provider to manage an existing performance venue. The venue is located within Festival Park located at 335 Ray Avenue near downtown Fayetteville, North Carolina. The goal of this procurement is the selection of the most qualified entity to provide complete management and operation of the amphitheater while assuring no financial liability to the City of Fayetteville and providing the City with a potential revenue stream for the City's general fund and parks and recreation programs on the occurrence of meeting certain financial targets.

Project Summary

Upon completion in April of 2007 the 6,000 square foot performance pavilion, an effort was made to attract nationally and internationally known performers to Fayetteville, in addition to the civic and cultural events already in place, to increase recreation opportunities to the citizens of Fayetteville, and surrounding communities. As a result, the facility has grown into a nationally respected facility. The city is seeking an organization that will maintain the high quality of services currently being offered, while ensuring the availability of the facility for current civic and cultural events including, but not limited to, the annual 4th of July and the New Year's Celebration.

Venue Overview

In 2007, construction was completed and included:

- Covered, elevated stage and dressing rooms, with restrooms and shower facilities.
- Addition of patron restrooms
- Addition of concessions stand.
- Staging area
- Electrical, mechanical, and sound equipment rooms
- Installation of fencing and gates
- Landscaping improvements

The facility has a capacity of 6,000 patrons.

Scope of Services

The City of Fayetteville is seeking an entity to provide professional management of the performance venue for all aspects of operations including concert promotion and scheduling, food and beverage service, ticketing, show production including marketing sales and sponsorships, and day-to-day maintenance/janitorial services. It is anticipated that the Parks and Recreation Division's day-to-day operations (other than contractual oversight) will be limited to

landscape maintenance in conjunction with its management of the park outside of the parks 's footprint.

Responders to this procurement should be experienced in all aspects of venue management including:

- Booking Event and Scheduling Services
 - Event Marketing
 - Managing all box office operations
 - Ticketing
 - Programming
 - Show and Event Production
 - Marketing
 - Weekly, monthly, quarterly and annual revenue/expense report
- Food and Beverage Concessions
 - Concessions
 - Catering
- Sponsorships
 - Event specific sponsorships
- Venue consulting
 - Venue assessment and revenue analysis
 - Risk Management
 - Staffing
 - Sponsorships
 - Patron Services
- Facility Management
 - Janitorial services for venue and site
 - Private event security
 - Coordination and/or the securing of Police, Fire, and EMS services
 - Lighting and Sound
 - Maintenance and repair of venue including stage, sound and seating

Priority will be given for these legacy events; Juneteenth, 4th of July, Dogwood Festival and New Year's Eve.

The City shall operate and maintain all areas of the park outside of the footprint of the venue and concession to include the lawn and landscape maintenance, play area maintenance, sidewalk/path maintenance, trash maintenance, and marketing and programming of the park.

RFP Response Timeline

The RFP process shall adhere to the following schedule:

RFP Process	Date	Time
Advertise RFP	12/19/23	5:00PM
RFP Written Questions Due	1/25/24	5:00PM
City Responses/Addendum	1/29/24	5:00PM
RFP Due Date	2/1/24	2:00PM
Interviews		TBA
City Council Awards		TBA

Note: All times shown as Eastern Standard Time (EST).

Pre-Proposal Questions

Questions concerning the specifications in this Request for Proposal should be directed to the Purchasing Manager. Questions will be received until **January 25, 2024 at 5:00 pm**. An addendum summarizing all questions and answers will be posted to the City’s website.

Purchasing Manager for the City of Fayetteville

Kimberly Toon

Purchasing Manager

Email: kimberlytoon@fayettevillenc.gov

Phone: 910-433-1942

Proposal Submittal Requirements

Proposals must follow the format as defined in the section marked “Proposal Format”

Respondents must submit one (1) signed original and five (5) copies plus one (1) electronic version, of the “Venue Management” proposal. The electronic version of the proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a USB drive attached to the proposal. Proposals must be enclosed in a sealed envelope or package and clearly marked **RFP – Venue Management Festival Park**. Both hard copy and electronic version must be received by the City on or before **February 1, 2024; at 2:00 PM**. Deliver proposals to the following mailing/physical address:

City of Fayetteville

Attention: Kimberly Toon, Purchasing Manager

433 Hay Street

Fayetteville, NC 28301

Proposals received after the “RFP Due” deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The outside of the submittal package and the USB must be clearly marked. The City reserves the right to reject any and all

proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the statement of Proposal. Respondents must respond to the entire Request for Proposal. Any Proposals received by the City that are incomplete in their responses will be immediately disqualified. Please submit a complete proposal responding to all required information requested. Incomplete proposals will be considered non-responsive and subject to rejection.

Rights to Submitted Material

All statements, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina Law) shall become the property of the City when received and the entire statement of Proposal shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by North Carolina Law and marked in bold “**Confidential.**”

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this Request for Proposal.

Proposal Format

Proposals should be limited to 25 pages or less, inclusive of cover page. Please use 8 ½” x 11” sheets, single spaced, one sided with no less than 12-point font. The Responder’s Certification and any section dividers and/or back cover do not count towards the 25-page limit

A. Cover Letter/Letter of Intent

The cover letter shall be addressed to Kimberly Toon, Purchasing Manager. It may be up to two pages (which do not count toward the 25-page maximum) ad, at a minimum must contain the following:

- Identification of organization, including name, address and telephone number.
- Name, title, address, and telephone number of contact person during period of proposal evaluation,
- A statement to the effect that the proposal shall remain valid for a period of not less than 90 calendar day from the date of submittal.
- Signature of a person authorized to bind the Firm to the terms of the proposal.

B. Business Plan

Provide a detailed business plan for the operation and management of the venue which must include addressing the issues set forth below:

- Experience managing similar venues

- Background and history that uniquely qualify your proposal
- Resumes/experience of the key personnel that will be involved with operations
- If you are a promoter of concerts, explain how the facility would be available to other promoters
- Discuss how capital improvements would be funded
- Discuss food and beverage operations
- Demonstrate how the business plan will be implemented including identifying challenges and issues such as mitigation of potential noise impacts on surrounding businesses and residents and any plans to work with organizers of long-held civic events.

C. Proposals

Discuss knowledge/understanding of the overall scope of management and related experience. Demonstrate the financial and human resource capacity to perform the work. List any current litigation in which key participants are a defendant. Clearly define the proposed organizational structure: include an organizational chart (include subcontractors/sub-consultants and their ability to undertake the assignment) and define responsibilities. Provide resumes/relevant experience of proposed team members.

D.References

Include references from three (3) individuals/organizations that can attest to your ability to maintain the high level of service currently offered. The City reserves the right to check any and all references submitted.

E. Financing Proposal

Submit a proposed operating budget. It is expected that all costs for the operation and management (other than the work by Parks and Recreation Division specifically addressed in other sections of this document) are the responsibility of the firm selected. Please state any exceptions to this. Propose a revenue sharing program including details on how this would be structured, financial targets, and any plans for capital improvements.

F. Diversity Plan

The City of Fayetteville is committed to including minority, women and small businesses in its procurement process. In an effort to increase diversity inclusion, proposers are requested to provide the City with information regarding their diversity and inclusion strategy. Explain your plans to achieve Minority/Women Business Enterprise (M/WBE/DBE) participation.

G. Minor Irregularities

The City of Fayetteville reserves the right to waive minor irregularities in submittals, provided that such action is in the best interest of the City. Any such waiver shall not modify any remaining solicitation requirements or excuse the submitter from full compliance with the

solicitation specifications and other contract requirements if the submitter is awarded the contract.

H. Evaluation Criteria

Criteria	Weights
Business Plan	35%
Proposals and experience of the proposed team members for the requested services	35%
References	5%
Financing Proposal	15%
Diversity Plan	10%

I. Final Selection

A team, comprised of City staff, will be responsible for the proposal evaluations. This team, in accordance with the criteria listed above, will evaluate all proposals received as specified. The City team members, in applying the major criteria to the proposals, may consider additional sub-criteria beyond those listed, as may come to light through the review of the various proposals. During the evaluations period the City of Fayetteville reserves the right to interview the top selected firms or all the responding firms. The City's final selection will be the firm which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best overall interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received.

Firms will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of the City.

Proposed costs quoted must be held firm for 90 days after the RFP is due. The City reserves the right to make an award without further discussion of the proposal submitted. The City shall not be bound or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract. The RFP may be awarded by individual task or total proposal whichever is most advantageous to the City of Fayetteville.

The general conditions and specifications of the RFP and the selected proposal, as amended by agreement between the City and the Contractor including e-mail or written correspondence relative to the RFP, may become part of the contract documents. Failure of the Contractor to perform as represented may result in elimination of the Contractor from competition or in contract cancellation or termination.

Professional Service Agreement

Scope of Work and Terms Document

City of Fayetteville, NC

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made as of the ____ day of ____ 2023 by and between the City of Fayetteville, a North Carolina City and Municipal Corporation (“City”), and _____.

In consideration of mutual promises and covenants in this Agreement, the parties agree as follows:

ARTICLE 1. Services

1.1 Background. The City desires to engage -----xxxxxx----- to provide certain professional services as fully described and outlined in the Proposal (Exhibit 1) which is attached hereto and fully incorporated into this Agreement by reference. -----xxxxxx----- is willing to provide such services as outlined in the Proposal on the terms and conditions stated in this Agreement.

1.2 Scope of Work. -----xxxxxx----- will furnish the services as set forth in the Proposal which is incorporated by reference herein.

1.3 Time of Performance. -----xxxxxx----- will perform the services promptly and according to the Proposal provided. The City will cooperate with -----xxxxxx----- as reasonably required to complete the services outlined in the Proposal. Both parties acknowledge that changes from or delays in the timeline may extend the date(s) for delivery of the service(s).

1.4 Term. The term of this Agreement shall begin on the date expressed in the introductory paragraph of this Agreement and shall continue until terminated based upon the completion of services by -----xxxxxx----- as outlined in the Proposal.

ARTICLE 2. Payment

2.1 Basis of Compensation: The City shall pay -----xxxxxx----- for services rendered under this Agreement in amounts tied to the various project milestones as set forth in the Proposal. Each payment shall be invoiced upon completion of each successive milestone and the City shall pay within thirty (30) days. In no event shall the payment for all work performed pursuant to this Agreement exceed the amount of \$ _____ without prior written authorization of the City. Such payment shall be full compensation for all work performed and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

2.2. Records. -----xxxxxx----- shall keep records and accounts pertaining to this Agreement available for inspection by the City for a period of three (3) years after final payment. Copies of records and accounts pertaining to this Agreement shall be made available to the City upon request.

ARTICLE 3. Termination

3.1 Termination for Cause: In the event of substantial failure by -----xxxxxxx----- to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate -----xxxxxxx----- upon ten calendar (10) days written notice in which event -----xxxxxxx----- shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. -----xxxxxxx----- shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

3.2 Termination for Convenience: Upon thirty (30) calendar days' written notice to -----xxxxxxx-----, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, -----xxxxxxx----- shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, --xxxxxxx----- shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, ----xx-xxxxxxx----- may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days' after the written notice is sent by the City of Fayetteville. -----xxxxxxx----- shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

ARTICLE 4. Liability, Indemnification and Insurance

4.1 General. The City and -----xxxxxxx----- have considered the risks and potential liability that may exist during the performance of services by -----xxxxxxx----- and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, -----xxxxxxx----- shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

4.2 Indemnity and Professional Liability. To the extent permitted by law, -----xxxxxxx----- agrees to defend, indemnify and hold harmless the City of Fayetteville and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of -----xxxxxxx----- its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by -----xxxxxxx----- does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. -----xxxxxxx----- agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A•VII.

4.3 Liability Insurance. -----xxxxxxx----- agrees to defend, indemnify and hold the City, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of -----xxxxxxx-----, -----xxxxxxx-----'s employees, and -----xxxxxxx-----'s subcontractors, for whom -----xxxxxxx----- is legally responsible during the performance of services under this Agreement. -----xxxxxxx----- shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the City as an additional insured and which said insurance provides -----xxxxxxx----- with insurance for contractual liability which -----xxxxxxx----- has assumed pursuant to the terms of this Agreement.

4.4 Other Insurance. In addition to professional liability insurance and commercial general liability insurance set forth above, -----xxxxxxx----- further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

- (a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to -----xxxxxxx----- for employer's liability.
- (b) Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- (c) The CGL policy required above shall include independent contractor liability coverage.

(d) The CGL policy required above shall provide -----xxxxxx----- with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of -----xxxxxx----- in the design of any building designed by -----xxxxxx----- under the terms of this Agreement.

ARTICLE 5. Independent Contractor. -----xxxxxx----- is an independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. -----xxxxxx----- shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by -----xxxxxx----- but City shall have the right to observe such performance.

ARTICLE 6. Other

6.1 Assignment. It is the intent of this Agreement to secure the personal services of -----xxxxxx----- and failure of -----xxxxxx----- for any reason to make the personal services available to the City for the purposes described in this Agreement and Proposal shall be cause for termination of this Agreement. -----xxxxxx----- shall not assign this Agreement without prior written consent of the City.

6.2 Non-Appropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City.

6.3. Governing Law. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

6.4 Venue. The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina

6.5 Non Discrimination. -----xxxxxx----- agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein.

6.6 Compliance with Laws. -----xxxxxx----- agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

6.7 Severability. The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Agreement and the requirements of applicable law.

6.8 Amendment. The City and -----xxxxxx----- may, from time to time, request changes in services to be performed by -----xxxxxx----- . Any such changes that are mutually agreed upon by the City and -----xxxxxx----- shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

6.10 Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6.11 Morality Clause. If, in the sole opinion of the City, at any time -----xxxxxx----- or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect

unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to -----xxxxxxx----- terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

6.12 **CITY'S TERMS SUPERSEDE:** To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

6.13 E-Verify. -----xxxxxxx----- hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. -----xxxxxxx----- further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). -----xxxxxxx----- hereby pledges, attests and warrants through execution of this Agreement that -----xxxxxxx----- complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by -----xxxxxxx----- shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

6.14 Divestment of Companies Boycotting Israel or Invest in Iran Certification.

Contractor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Contract. By signing this Contract, Contractor further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Contractor appearing on the Treasurer's FD Lists at any time before or during the term of this Contract.

6.15 Survival of Terms. All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

[Signature page to follow]

ATTEST:

VENDOR

By: _____

Title: _____

Address: _____

Phone: _____

Date: _____

Signature

ATTEST:

PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE

By: _____
ADAM J. LINDSAY
Assistant City Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

JODY PICARELLA
Chief Financial Officer